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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/745,826

12/21/2000

Anthony Berno Berno

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01/11/2006

AFFYMETRIX, INC

ATTN: CHIEF IP COUNSEL, LEGAL DEPT.

3380 CENTRAL EXPRESSWAY

SANTA CLARA, CA 95051

EXAMINER

CHARIOUI, MOHAMED

ART UNIT

PAPER NUMBER

2857

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/745,826	BERNO, ANTHONY BERNO	
Examiner	Art Unit	
Mohamed Charioui	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-63 and 66-98 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-63 and 66-98 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1-3, 9, 12-14, 22, 23, 30-32, 38-40, 43-45, 53, 54, 66-68, 74, 77-79, 87, 88 and 95-98** are rejected under 35 U.S.C. 103(a) as being unpatentable over Balaban et al. (U.S. 6,188,783) in view of Lyons (U.S. 6,006,232).

As per claims 1, 9, 13, 22, 30, 38, 40, 44, 53, 66, 74, 78, 87, 95 and 97, Balaban et al. teach grouping a set of data (i.e. probe records) according to its most common access requirements into a plurality of groups (see col. 2, lines 38-48; col. 5, line 55 to col. 6, line 6; and col. 4, lines 19-53); and storing the groups in a database (see col. 2, lines 38-48).

Balaban et al. fail to teach storing the groups in a database as single binary objects, wherein each of the groups is stored as one single binary object.

Lyons teaches this feature (see col. 2, lines 15-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Lyons's teaching into Balaban et al.'s invention because it would store the groups as single binary objects and each of the groups is stored as one single binary object. Therefore, data storage would be optimized and both storage cost and operation time would be reduced.

As per claims 2, 3, 14, 23, 31, 32, 45, 54, 67, 68, 79 and 88, Balaban et al. further teach that the database is a relational database (see col. 2, lines 38-46).

As per claims 12, 43 and 77, Balaban et al. further teach that the set of data are probe design data comprising probe information (see col. 2, lines 28-37).

As per claims 39, 40, 96 and 98, Balaban et al. teach that the probe intensity data are from gene expression experiments (see col. 6, lines 7-29).

Balaban et al. fail to teach that the data from each probe set are grouped into one single binary object.

Lyons teaches this feature (see col. 2, lines 15-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Lyons's teaching into Balaban et al.'s invention because the data from each probe set would be grouped into one single binary object. Therefore, data storage would be optimized and both storage cost and operation time would be reduced.

2. **Claims 10, 11, 41, 42, 75 and 76** are rejected under 35 U.S.C. 103(a) as being unpatentable over Balaban et al. in view of Lyons and Ghandoor et al. (U.S 6,516,276).

As per claims 10, 41, and 75, Balaban et al. in view of Lyons teach the system as stated above except grouping at least a 100 probe intensity values.

Ghandoor et al. teach this feature (see col. 6, line 65 to col. 7, line 7; Fig. 2; col. 17, lines 18-30; and Fig. 6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Ghandoor et al.'s teaching into Balaban et al. in view Lyons's teaching because it would group 100 probe intensity

values. Therefore, these intensity values would be analyzed to determine whether a gene is present in the unknown sample or not.

As per claims 11, 42, and 76, Balaban et al. in view of Lyons teach the system as stated above except grouping at least a 1000 probe intensity values.

Ghandoor et al. teach this feature (see col. 6, line 65 to col. 7, line 7; Fig. 2; col. 17, lines 18-30; and Fig. 6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Ghandoor et al.'s teaching into Balaban et al. in view of Lyons's teaching because it would group 1000 probe intensity values. Therefore, these intensity values would be analyzed to determine whether a gene is present in the unknown sample or not.

3. **Claims 4-8, 15, 24, 28, 29, 33-37, 46, 55, 56, 69-73, 80, 86, 89 and 90** are rejected under 35 U.S.C. 103(a) as being unpatentable over Balaban et al. in view of Lyons and Keesey et al. (U.S 6,598,055).

Balaban et al. in view of Lyons teach the system as stated above except that the grouping comprises encoding the data into the binary objects by calling a component software.

Keesey et al. teach this feature (see col. 4, lines 7-35). It would have been obvious to one having ordinary skill in the art at the time the invention to incorporate Keesey et al.'s teaching into Balaban et al. in view of Lyons's teaching because it would encoding the data into the binary objects by calling COM object. Therefore, interface between the client and the object would be provided and the need for application

programmer to write application programs that retrieve data from a structured object would be eliminated.

As per claims 24, 56 and 90, Balaban et al. further teach that each of the groups comprises data for probes in a tiling segment (see col. 6, lines 29-46).

4. **Claims 16-21, 47-52, 81-83 and 86** are rejected under 35 U.S.C. 103(a) as being unpatentable over Balaban et al. in view of Lyons and Keesey et al. and Ghandoor et al.

As per claims 16, 47 and 81, Balaban et al. in view of Lyons and Keesey et al. teach the system as stated above except grouping at least a 100 probe intensity values.

Ghandoor et al. teach this feature (see col. 17, lines 18-30 and Fig. 6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Ghandoor et al.'s teaching into Balaban et al. in view of Lyons and Keesey et al.'s teaching because it would group 100 probe intensity values. Therefore, these intensity values would be analyzed to determine whether a gene is present in the unknown sample or not.

As per claims 17, 18, 48, 49 and 82-85, Balaban et al. in view of Lyons and Keesey et al. teach the system as stated above except grouping at least a 1000 probe intensity values.

Ghandoor et al. teach this feature (see col. 17, lines 18-30 and Fig. 6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Ghandoor et al.'s teaching into Balaban et al. in view of Lyons and Keesey et al.'s teaching because it would group 1000 probe intensity values.

Therefore, these intensity values would be analyzed to determine whether a gene is present in the unknown sample or not.

As per claims 19-21, 50-52 and 86, Balaban et al. in view of Lyons and Ghandoor et al. teach the system as stated above except that the grouping comprises encoding the data into the binary objects by calling a component software.

Keesey et al. teach this feature (see col. 4, lines 7-35). It would have been obvious to one having ordinary skill in the art at the time the invention to incorporate Keesey et al.'s teaching into Balaban et al. in view of Lyons and Ghandoor et al.'s teaching because it would encoding the data into the binary objects by calling COM object. Therefore, interface between the client and the object would be provided and the need for application programmer to write application programs that retrieve data from a structured object would be eliminated.

5. **Claims 26, 27, 57-63 and 91-94** are rejected under 35 U.S.C. 103(a) as being unpatentable over Balaban et al. in view of Lyons and Keesey et al. and Hacia et al. (U.S. 6,342,355).

Balaban et al. in view of Lyons and Keesey et al. teach the system as stated above except that the segment is at least 250 bases.

Hacia et al. teach this feature (see col. 8, lines 3-21). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Hacia et al.'s teaching into Balaban et al. in view of Lyons and Keesey et al.'s teaching because the probe set would tile at least a 250 bases segment region of

interest. Therefore, different genes would be interrogated and the composition of the sample target would be determined.

Response to Arguments

6. Applicant's arguments filed 10/20/05 have been fully considered but they are not persuasive.

Applicant argues that all of the references cited by the Examiner fail to disclose or suggests grouping a set of data according to its most common access requirements into a plurality of groups.

Examiner disagrees with the Applicant's argument because Balaban et al. teach grouping a set of data which is a set of records (see col. 2, lines 38-48) and these set of data (i.e. records) are grouped according to its most *common access requirements (i.e. key attributes)* (see col. 5, line 55 to col. 6, line 6). Therefore Examiner maintains the rejection set forth above.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact information

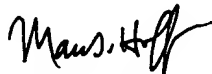
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohamed Charioui whose telephone number is (571) 272-2213. The examiner can normally be reached Monday through Friday from 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S Hoff can be reached on (571) 272-2216. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mohamed Charioui

1/6/06


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800